



The State of New Hampshire
Department of Environmental Services



Michael P. Nolin
Commissioner

July 8, 2004

Hitchiner Manufacturing Company, Inc.
Attn: Timothy C. Sullivan, Esq.
Old Wilton Road
PO Box 2001
Milford, NH 03055

Re: Administrative Order by Consent Docket No. AO ARD 04-003

Dear Attorney Sullivan:

Enclosed for your records is a copy of the Administrative Order by Consent in the above-captioned matter which was executed by Robert R. Scott, Air Resources Division Director, and accepted by Commissioner Michael P. Nolin on July 8, 2004. On behalf of the Department of Environmental Services, thank you for your cooperation in resolving these matters. If you have any questions, please contact me at (603) 271-6072, or by e-mail at msclafani@des.state.nh.us.

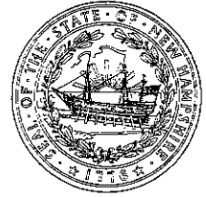
Sincerely,

COPY
Michael Sclafani
Legal Assistant

cc: Robert R. Scott, Director, Air Resources Division
Gretchen R. Hamel, Administrator DES Legal Unit
Public Information Officer, DES PIP
Pamela Monroe, DES ARD
Raymond Walters, DES ARD
R. Kurowski, EPS Region I
N Amato, Chairman of Selectmen, Town of Milford



The State of New Hampshire
Department of Environmental Services



Michael P. Nolin
Commissioner

Hitchiner Manufacturing Company, Inc.
Old Wilton Road
P.O. Box 2001
Milford, NH 03055

**ADMINISTRATIVE ORDER
BY CONSENT**

No. ARD 04-003

A. INTRODUCTION

This Administrative Order by Consent is issued by the Department of Environmental Services, Air Resources Division to, and with the consent of, Hitchiner Manufacturing Company, Inc. pursuant to RSA 125-C:15. This Administrative Order by Consent is effective upon issuance.

B. PARTIES

1. The Department of Environmental Services, Air Resources Division ("DES"), is a duly constituted administrative agency of the State of New Hampshire, having its principal office at 29 Hazen Drive, Concord, NH 03302-0095.
2. Hitchiner Manufacturing Company, Inc. ("Hitchiner") is a corporation registered with the New Hampshire Secretary of State's Office, having a mailing address of Old Wilton Road, P.O. Box 2001, Milford, New Hampshire 03055.

C. STATEMENTS OF FACTS AND LAW

1. RSA 125-C authorizes DES to regulate sources of air pollution in New Hampshire. RSA 125-C:4 authorizes the Commissioner to adopt rules relative to the prevention, control, abatement, and limitation of air pollution in New Hampshire. Pursuant to this authority, the Commissioner has adopted NH Admin. Rules Env-A 100 *et seq.*
2. RSA 125-C:15,I-b(b) authorizes the Commissioner to impose administrative fines of up to \$2,000 per offense for violations of RSA 125-C and rules promulgated pursuant thereto.
3. RSA 125-J:4,VII authorizes the Commissioner to suspend, modify, or revoke any emissions reduction credits certificate, or any portion thereof, for violations of RSA 125-J, or of any applicable rule, order, permit, or certificate condition.
4. Hitchiner owns and operates investment casting foundries located in Milford, NH. Prior to July 31, 2002, a process in Hitchiner's investment casting operations, more specifically the ceramic shell molding operation in Plant 1 and Plant 2, emitted volatile organic compounds ("VOCs"). Hitchiner ceased its VOC-emitting shell molding operation in Plant 2 as of July 31, 2002.

5. RSA 125-C:2, XI defines a stationary source as "any building, structure, facility, or installation which emits or which may emit any regulated air pollutant."

6. Env-A 101.168(b)(3)(a) defines a major source as, among other things, any stationary source that emits or has the potential to emit 50 tons or more of VOCs in ozone non-attainment areas classified as "serious", and, in accordance with Env-A 101.168(b), includes a group of stationary sources which are located on one or more contiguous or adjacent properties, are under the common control of the same person, and whose total emissions meet this same criteria.

7. Hitchiner is located in Hillsborough County, classified as "serious" for ozone non-attainment, and has the potential to emit greater than 50 tons of VOCs.

8. Env-A 609.01 states that any major stationary source, area source or device, unless otherwise exempt, shall obtain a Title V operating permit in accordance with Env-A 609 Title V Operating Permits.

9. Env-A 609.07 requires the owner of a major stationary source unless otherwise exempt, to submit a Title V Permit application on or before June 30, 1996 or for sources that become subject to the Title V program after the effective date of the rule, which is June 30, 1996, an application shall be submitted no later than 12 months after the source becomes subject.

10. On June 21, 1996, through GEI Consultants, Hitchiner submitted an application for a Title V permit to DES.

11. On November 13, 1992, DES adopted Env-A 1204, Volatile Organic Compound (VOC) Reasonably Available Control Technology (RACT) regulations. Env-A 1204.27 (effective August 31, 1995), *Applicability Criteria and Compliance Options for Miscellaneous and Multicategory Stationary VOC Sources*, required sources with combined theoretical potential emissions at or above 50 tons in any consecutive 12-month period at any time after December 31, 1989 to comply with one of five control options.

12. Hitchiner opted to comply with Env-A 1204.27 by following Control Option 1 specified in Env-A 1204.27(d). This option requires the installation and operation of capture and control system(s) that result(s) in a reduction in the actual facility-wide uncontrolled VOC emissions to the atmosphere, calculated on a daily basis, of at least 81 percent from the facility-wide uncontrolled emissions.

13. Hitchiner was unable to comply with the 81 percent reduction in daily, actual facility-wide uncontrolled VOC emissions required by Env-A 1204.27(d) for calendar years 1995, 1996 and 1997.

14. Hitchiner exceeded the minimum 81 percent reduction required by Control Option 1 by August 1997. The control equipment was stack tested on January 14, 1998. Results of the stack test indicated that the control equipment achieved 96.58 percent destruction efficiency for VOCs from Plant 2, resulting in an overall facility-wide destruction removal efficiency of 91.16 percent, which exceeded the 81 percent required by Env-A 1204.27(d).

15. On April 23, 1998, DES issued Administrative Order by Consent No. ARD. 98-002 ("the AOC") to Hitchiner. The AOC was issued to Hitchiner for its failure to comply with VOC RACT by May 31, 1995, for emitting VOCs above the allowable permit limit during calendar years 1995, 1996, and 1997, and for operating Plant 1 without the appropriate permit. In addition, the AOC required Hitchiner to, among other things, comply with control option 1 of Env-A 1204.27(d)(2) by installing and operating capture and control systems that result in a facility-wide reduction in the actual uncontrolled VOC emission rate to the atmosphere, calculated on a daily basis, of at least 81%, and to comply with a VOC emission cap of 274 tons during any consecutive 12-month period for Plant 1 and 2 combined. This limit was to be incorporated into the Title V permit to be issued by DES.

16. On April 12, 2002, Hitchiner submitted a proposal to DES for the generation of Emissions Reductions Credits ("ERCs"). In the proposal, Hitchiner requested to generate ERCs in accordance with Env-A 3003.04, by ceasing operation of the VOC-emitting processes in Plant 2. In addition, the proposal included a request to withdraw the application for a Title V permit. Lastly, on April 16, 2002 DES received a new permit application from Hitchiner to obtain a synthetic minor source permit that would limit Hitchiner's VOC emissions to less than 50 tons per year.

17. On June 21, 2002, DES issued RACT Order ARD-02-001 ("the RACT Order") to Hitchiner. Condition D.5 of the RACT Order limits Hitchiner's emissions to less than 50 tons of VOCs in any consecutive 12-month period.

18. On June 21, 2002, DES issued Certificate of Emissions Reductions Credits Generation No. 02VHitchiner01C ("the ERC Certificate") to Hitchiner. Condition 4 of the ERC Certificate limits Hitchiner's emissions to less than 50 tons of VOCs in any consecutive 12-month period.

19. On July 22, 2003, Hitchiner self-reported to DES that its emissions of VOCs from Plant 1 were expected to exceed the limit of 50 tons per consecutive 12-month period.

20. RSA 125-J:4 provides that the Commissioner may suspend, modify, or revoke any ERC certificate upon finding that the certificate holder has committed any violation of any certificate condition in force and applicable to it.

21. On August 29, 2003, Hitchiner proposed a compliance plan and timeline, which included a number of possible corrective actions that it was evaluating to reduce its VOC emissions and return to compliance.

22. On September 5, 2003, DES requested that Hitchiner provide information on the monthly VOC emission data from Plant 1 for January through August of 2003.

23. On September 9, 2003, DES received Hitchiner's emission data for Plant 1 for the period of January through August of 2003. While reviewing this data, DES discovered a discrepancy in the calendar year 2002 emissions inventory report that was submitted by Hitchiner to DES on March 28, 2003.

24. On September 16, 2003, Hitchiner submitted a Notice of Use of Discrete Emissions Reductions ("DERs") certifying compliance for the period July 1, 2002 through June 30, 2003 and certifying that VOC emissions during the 12-month period were 46.67 tons.

25. In a letter dated October 13, 2003, DES requested that Hitchiner resubmit the emissions for calendar year 2002 and for the period of January through September of 2003.

26. On October 31, 2003, Hitchiner provided emission data to DES showing monthly VOC emissions and consecutive 12-month totals for the period of January 2002 through September 2003. The data confirmed earlier concerns raised by Hitchiner, specifically that Hitchiner exceeded the VOC emissions limit of 50 tons per consecutive 12-month period, as stipulated in the RACT Order and the ERC Certificate, beginning with the 12-month consecutive period ending in September 2003. The total emissions for the consecutive 12-month period from October 1, 2002 through September 30, 2003 were 51.01 tons.

27. As of September 30, 2003, Hitchiner's consecutive 12-month VOC emissions exceeded the 50 ton major source threshold. At that time, Hitchiner did not possess a Title V permit and had withdrawn its application for a Title V permit.

28. On November 14, 2003, DES met with Hitchiner to discuss the method that Hitchiner used to determine the amount of VOCs emitted each calendar month. In addition, during this meeting, DES informed Hitchiner that it intended to suspend the ERC certificate.

29. On November 19, 2003, DES received additional emission data from Hitchiner in which it projected an estimate of its monthly VOC emissions and consecutive 12-month emission totals for the months of November 2003 through December 2004. The data projected a decrease in Hitchiner's monthly VOC emissions beginning in July 2004, and compliance with the 50 ton consecutive 12-month total beginning with the period of December 2003 through November 2004. Hitchiner's projection was predicated on the assumption that DES would issue to Hitchiner a temporary permit by February 1, 2004 in order for Hitchiner to be able to install control technology.

30. In a letter to DES dated December 12, 2003, Hitchiner submitted an updated compliance plan in which it confirmed its plans to achieve compliance by purchasing, installing and operating a VOC control device. Hitchiner committed to complying with the limit for VOC emissions of 50 tons per consecutive 12-month period beginning in December 2004. In addition, Hitchiner requested in the letter a 75 ton per consecutive 12-month VOC emission limit until that time. The plan was also predicated on the assumption that DES would issue to Hitchiner a temporary permit by February 1, 2004.

31. On December 15, 2003, Hitchiner submitted an application for a Temporary Permit for a catalytic oxidizer ("Catox"). Hitchiner also intends to install a Meunter's concentrator wheel, in order to concentrate the dilute VOC exhaust, which will provide for more efficient combustion in the Catox and lower VOC emissions.

D. DETERMINATION OF VIOLATIONS

1. Hitchiner violated Env-A 609 by emitting greater than 50 tons of VOCs in a consecutive 12-month period after requesting to withdraw its application for a Title V operating permit and applying for a synthetic minor permit (source ID: 3301100064) to limit its VOC emissions to less than 50 tons per consecutive 12-month period.
2. Hitchiner violated Condition D.5 of the RACT Order ARD-02-001 by emitting more than 50 tons of VOCs in any consecutive 12-month period.
3. Hitchiner violated Condition 4 of Certificate of Emissions Reductions Credits Generation No. 02VHitchiner01C by emitting more than 50 tons of VOCs in any consecutive 12-month period.

E. ADMINISTRATIVE FINES

1. To the extent that Hitchiner emits greater than 50 tons, but not more than 65 tons of VOCs per consecutive 12-month period, DES has determined the violations in Paragraphs D.1 and D.2 to be a minor deviation from the requirement with a minor potential for harm. RSA 125-C:15,I-b specifies a range of \$100-1000 per violation. DES will consider each day of the most recent month of each 12-month consecutive period in which the 50 ton limit is exceeded to be a separate violation. DES will assess an administrative fine of \$500 for each of these violations, and will reduce this administrative fine amount by 50 percent, to \$250 per violation, as allowed by New Hampshire's Compliance Assurance Response Policy, for Hitchiner's self-reporting the violations addressed by this AOC. Accordingly, Hitchiner shall pay DES an administrative fine of \$250 for each day during the most recent month, not to exceed \$7,500 per month, during which its VOC emissions are greater than 50 tons, but not more than 65 tons, in the preceding consecutive 12-month period.
2. To the extent that Hitchiner emits greater than 65 tons, but not more than 75 tons of VOCs per consecutive 12-month period, DES has determined the violations in Paragraphs D.1 and D.2 to be a moderate deviation from the requirement with a minor potential for harm. RSA 125-C:15,I-b specifies a range of \$601-1250 per violation. DES will consider each day of the most recent month of each 12-month consecutive period in which the 50 ton limit is exceeded to be a separate violation. DES will assess an administrative fine of \$750 for each of these violations, and will reduce this administrative fine amount by 50 percent, to \$375 per violation, as allowed by New Hampshire's Compliance Assurance Response Policy, for Hitchiner's self-reporting the violations addressed by this AOC. Accordingly, Hitchiner shall pay DES an administrative fine of \$375 for each day during the most recent month, not to exceed \$11,250 per month, during which its VOC emissions are greater than 65 tons, but not more than 75 tons, in the preceding consecutive 12-month period.
3. Within 30 days of the date of this AOC, Hitchiner shall submit a check in the amount of \$67,250 payable to "Treasurer, State of New Hampshire". Hitchiner first exceeded this 50 ton limit beginning with the consecutive 12-month period ending September 30, 2003 and continuing through the consecutive 12-month period ending May 31, 2004. This administrative fine was calculated for this 9 month period pursuant to Paragraph E.1 above.

4. Beginning on July 1, 2004, Hitchiner shall determine the administrative fine due and payable to DES for each consecutive 12-month period in which its VOC emissions exceed 50 tons pursuant to Paragraphs E.1 and E.2 above. Hitchiner shall submit the administrative fines to DES as a certified check made payable to "Treasurer, State of New Hampshire" and postmarked within 15 days after the end of each new consecutive 12-month period. The first submittal of the monthly administrative fines, for the consecutive 12-month period ending on June 30, 2004, shall be postmarked by July 15, 2004.
5. Payments required to be made to DES by Paragraphs E.3 and E.4 shall be mailed to:

DES Legal Unit
Department of Environmental Services
29 Hazen Drive
P.O. Box 95
Concord, NH 03302-0095

F. ORDER

Based on the above findings, DES hereby orders Hitchiner, and Hitchiner agrees, to undertake and complete the following actions in accordance with the time schedules specified:

1. Hitchiner shall complete the following tasks within the respective deadlines as follows:
 - a. By July 1, 2004, Hitchiner shall order the Meunter's concentrator and Catox;
 - b. By August 15, 2004, Hitchiner shall install the Meunter's concentrator and Catox;
 - c. By September 1, 2004, the Meunter's concentrator and Catox shall be operational;
 - d. Within 60 days after first achieving maximum operation with the Meunter's concentrator and Catox, but no later than March 1, 2005, Hitchiner shall perform compliance stack testing to determine its VOC destruction efficiency (minimum 81%); and
 - e. By January 31, 2005, Hitchiner shall comply with the VOC emission limit of 50 tons per consecutive 12-month period.
2. Hitchiner shall not emit greater than 75 tons of VOCs in any consecutive 12-month period from the date of issuance of this AOC and during the period covered by the compliance schedule in Paragraph F.1 (ending January 31, 2005). Beginning January 31, 2005, Hitchiner shall at all times comply with the emission limit of 50 tons of VOCs during any consecutive 12-month period.
3. Pursuant to RSA 125-J, DES has determined that for the violation in Paragraph D.3, the Certificate of Emissions Reductions Credits Generation No. 02VHitchiner01C is hereby suspended as of September 30, 2003.
4. Within 30 days of receipt of written notification from Hitchiner that it has complied with all of the provisions set forth in Paragraph F.1, DES shall re-issue the ERC Certificate. The ERC Certificate shall contain the original limitations.

5. Pursuant to RACT Order ARD 02-001, Hitchiner shall comply with VOC RACT by purchasing and using Discrete Emission Credits ("DERs"). Accordingly, to ensure compliance with RACT Order ARD 02-001, within 30 days of the date of issuance of this AOC Hitchiner shall purchase 41 DERs (20 ozone season credits and 21 non-ozone season credits). The 41 DERs needed to comply with RACT Order ARD 02-001 were calculated from Hitchiner's actual VOC emissions for the period since suspension of the ERC Certificate pursuant to Paragraph F.4 until issuance of this AOC, and includes Hitchiner's projected VOC emissions through June 30, 2004. Appendix A illustrates this calculation.

6. Until such time as DES re-issues the ERC Certificate, Hitchiner shall purchase DERs on a calendar quarter basis, such that Hitchiner has enough DERs on hand to cover the RACT reductions necessary for its projected VOC emissions during each following calendar quarter. For example, Hitchiner shall purchase sufficient DER's prior to July 1, 2004 to cover its projected VOC emissions during the calendar quarter covering July, August and September 2004. If Hitchiner emits less than its projected amount of VOCs in a calendar quarter, then Hitchiner may retain unused DERs from any previous purchase for use in the next calendar quarter. Appendix A describes the method Hitchiner must use to calculate the quantity of projected DERs.

7. In accordance with Env-A 3104.09, during the compliance period covered by this AOC, Hitchiner shall submit monthly Notices and Certifications of DER Use to DES. See Appendix A for the method that Hitchiner must use to calculate the required number of DERs.

8. Hitchiner shall submit the following to DES each month of the compliance period as stipulated in Paragraph F.1 (ending January 31, 2005). Each submittal shall be postmarked within 15 days after the end of each month of the compliance period. The first submittal, covering VOCs emitted during May 2004 and June 2004, shall be postmarked by July 15, 2004:

- a. The total number of tons of VOCs emitted during the previous month and the total VOC emissions for the previous consecutive 12-month period;
- b. The number of DERs necessary to cover the tons of VOCs emitted during the previous month; and
- c. Hitchiner's progress on meeting the tasks and deadlines set forth in Paragraph F.1.

9. In accordance with 40 CFR 70.6(c)(5)(iii)(A) through (D), Hitchiner shall certify its compliance status with all the conditions and requirements of Temporary Permit TP-BP-0684, and any other permits that become applicable during this period, until Hitchiner achieves compliance with the 50 ton consecutive 12-month limit for VOCs. Hitchiner shall also certify its compliance with the requirements of Sections E and F of this AOC. Hitchiner shall submit a compliance certification by April 15, 2005 for the period covering January 1, 2004 through December 31, 2004. If Hitchiner fails to comply with the 50 ton consecutive 12-month limit for VOCs by the date stipulated in the compliance schedule in Paragraph F.1 (i.e. January 31, 2005), then Hitchiner shall submit a compliance certification by April 15, 2006 for the all months in calendar year 2005 when it remained out of compliance.

10. In accordance with 40 CFR 70.6(a)(3)(iii)(A) and Env-A 911.05(a), Hitchiner shall submit semi-annual permit deviation and monitoring ("PD/M") reports for January 1 through June 30, 2004, and July 1 through December 31, 2004. The reports shall summarize any and all monitoring requirements of Temporary Permit TP-BP-0684, and any other permits that become applicable during this period, and any deviations from any condition or requirement of those permits, for the semi-annual periods until Hitchiner achieves compliance with the consecutive 12-month 50 ton limit for VOCs. Hitchiner shall submit the semi-annual PD/M report to DES by July 31, 2004 and January 31, 2005 for each preceding semi-annual period. If Hitchiner fails to comply with the 50 ton consecutive 12-month limit for VOCs by the date stipulated in the compliance schedule in Paragraph F.1 (i.e. January 31, 2005), then Hitchiner shall submit a semi-annual PD/M report for any period of calendar year 2005 in which it remained out of compliance (i.e. by July 31, 2005 for the period of January through June of 2005; by January 31, 2006 for the period of July through December of 2005; etc.).

11. Send correspondence, data, reports, and other submissions made in connection with this Administrative Order by Consent (other than the payments required by Section E. Administrative Fines) to DES as follows:

Ray Walters, Senior Enforcement Engineer
Compliance Bureau
DES Air Resources Division
29 Hazen Drive
P.O. Box 95
Concord, NH 03302-0095
Phone: (603) 271-6288
Fax: (603) 271-1381
e-mail: rwalters@des.state.nh.us

G. STIPULATED PENALTIES

1. To the extent that Hitchiner fails to comply with the consecutive 12-month emission limit of 50 tons of VOCs by January 31, 2005, as stipulated in Paragraph F.1, and emits greater than 50 tons, but not more than 65 tons of VOCs per consecutive 12-month period, DES has determined this violation to be a moderate deviation from the requirement with a minor potential for harm. RSA 125-C:15, I-b specifies a range of \$601 -1250 per violation. DES will consider each day of the most recent month of each 12-month consecutive period in which the 50 ton limit is exceeded to be a separate violation. Hitchiner agrees to pay an administrative fine of \$850 for each day during the most recent month after January 31, 2005, not to exceed \$25,500 per month, during which its VOC emissions are greater than 50 tons, but not more than 65 tons, in the preceding consecutive 12-month period.

2. To the extent that Hitchiner fails to comply with the consecutive 12-month emission limit of 50 tons of VOCs by January 31, 2005, as stipulated in Paragraph F.1, and emits greater than 65 tons, but not more than 75 tons of VOCs per consecutive 12-month period, DES has determined this violation to be a major deviation from the requirement with a minor potential for harm. RSA 125-C:15, I-b specifies a range of \$851 -1500 per violation. DES will consider each day of the most recent month of each 12-month consecutive period in which the 50 ton limit is exceeded to be a separate violation. Hitchiner agrees to pay an administrative fine of \$1500 for each day during the most recent month after January 31, 2005, not to exceed \$45,000 per month, during which its VOC emissions are greater than 65 tons, but not more than 75 tons, in the preceding consecutive 12-month period.

3. The stipulated penalties set forth in Paragraphs G.1 and G.2 above shall be paid to DES by the 15th day of the month following the previous consecutive 12-month period in which Hitchiner's VOC emissions exceed 50 tons. If payment is not postmarked by the 15th day of the month following the violation, the stipulated penalty shall be increased by an additional \$500 for each day after the 15th day of the month, until the penalty is postmarked to DES. If the payment is not postmarked by the last day of the month following the violation, the stipulated penalty will increase to \$1,000 per day after the 15th day of the month until postmarked to DES.

4. If stipulated penalties become due, payment shall be submitted to DES in the form of a certified check made payable to the "Treasurer, State of New Hampshire". Any payment shall be mailed to:

DES Legal Unit
Department of Environmental Services
29 Hazen Drive
P.O. Box 95
Concord, NH 03302-0095

5. If Hitchiner fails to comply with the consecutive 12-month emission limit of 50 tons of VOCs by January 31, 2005, as stipulated in Paragraph F.1, then Hitchiner shall continue to submit the monthly, semi-annual and annual reports required by Paragraphs F.7, F.8, F.9 and F.10.

H. FORCE MAJEURE

1. If any event occurs which causes or may cause delays in the performance and completion of the activities required under Paragraph F.1, Hitchiner shall notify DES in writing within 7 days of the delay or of Hitchiner's knowledge of the anticipated delay, whichever is earlier. The notice shall describe in detail the anticipated length of the delay, the precise cause or causes of the delay, the measures taken and to be taken by Hitchiner to prevent or minimize the delay, and the timetable by which those measures will be implemented. Hitchiner shall adopt all reasonable measures to avoid or minimize any such delay. Failure by Hitchiner to comply with the notice requirements of this paragraph shall render this section void and of no effect as to the particular incident involved and constitute a waiver of Hitchiner's right to request an extension of its obligation under Paragraph F.1 based on such incident.

2. If DES and Hitchiner agree that the delay or anticipated delay in compliance with Paragraph F.1 has been or will be caused by circumstances beyond the reasonable control of Hitchiner, the time for performance hereunder may be extended for a period no longer than the delay resulting from such circumstances. In making the determination whether to extend the time for performance, DES shall consider the identity of the party responsible for the delay, and the efforts, ability, and legal authority of Hitchiner to avoid and minimize the delay, in addition to any other relevant and appropriate factors. If DES and Hitchiner agree, they shall stipulate to such extension of time.
3. In the event that DES does not reasonably agree that a delay in achieving compliance with Paragraph F.1 has been or will be caused by circumstances beyond reasonable control of Hitchiner, DES will notify Hitchiner in writing of its decision and any delays in such performance shall not be excused. Nothing herein precludes Hitchiner from seeking judicial review of DES's decision. If Hitchiner seeks judicial review in good faith, the provisions of Paragraph G.3 shall not apply.
4. The burden of proving that any delay is caused by circumstances beyond reasonable control of Hitchiner shall rest with Hitchiner. Increased costs or expenses associated with the implementation of actions called for in Paragraph F.1 shall not, in any event, be a basis for changes in this Administrative Order by Consent or extensions of time under Paragraph H.2. Delay in achievement of one interim step shall not necessarily justify or excuse delay in achievement of subsequent steps.

I. CONSENT AND WAIVER OF APPEAL

1. By execution of this Administrative Order by Consent, Hitchiner agrees that this Order shall apply to and be binding upon Hitchiner, its officers, directors, successors, and assigns, and agrees that this Order may be entered and enforced by a court of competent jurisdiction.
2. By executing this Order, Hitchiner agrees to waive its right to a hearing on or any appeal of the administrative fines or stipulated penalties identified in Sections E and G, except as described in Paragraph H.3, and agrees that this Order may be entered into and enforced by a court of competent jurisdiction. In any proceeding before DES to enforce this Order, Hitchiner agrees not to challenge the validity of any provision of this Order. Also, in any future proceeding by DES assessing the compliance history of Hitchiner and alleging violations of the New Hampshire Code of Admin. Rules or statutes identical to the gravamen of the violations alleged in Paragraphs D.1 through 3 of this Order, Hitchiner agrees, without admission of fact or law, that it will not challenge any assertion by DES that such violation(s) constitute a repeat violation under RSA 125-C:5, I-b(c).
3. If any payment is made by check or money order that is returned due to insufficient funds, pursuant to NH RSA 6:11-a, DES may charge a fee in the amount of 5% of the face amount of the check or money order or \$25.00, whichever is greater, plus all protest and bank fees, in addition to the amount of the check or money order, to cover the costs of collection.
4. The parties have entered into this agreement to avoid the time and cost of litigation. Except as described in Paragraph I.2 above, this Order shall not constitute, be construed as, or operate as: (i) an admission or evidence of liability by Hitchiner; (ii) an admission by Hitchiner or evidence that it violated any law, rule, regulation, policy or regulatory interpretation; or (iii) a waiver of any defense Hitchiner might raise in any third party proceeding.

5. By execution of this Administrative Order by Consent, Hitchiner waives any right to appeal this Administrative Order by Consent provided by any statute, including RSA 125-J:4, VII, rule or common law, including without limitation the right to appeal to the Air Resources Council, and waives any right to object to the entry and enforcement by a court of competent jurisdiction.


HITCHINER MANUFACTURING COMPANY, INC.



William A. Brown
Duly Authorized


JUNE 23, 2004
Date

STATE OF NEW HAMPSHIRE DEPARTMENT OF ENVIRONMENTAL SERVICES



Robert R. Scott, Director
Air Resources Division

6 July 2004
Date



Michael P. Nolin, Commissioner
Department of Environmental Services

July 8, 2004
Date

cc: G. Hamel, DES Legal Unit
R. Kurowski, EPA Region I
N. Amato, Chairman of Selectmen, Town of Milford
Enforcement File
AFS # 3301900069

APPENDIX A

Calculation of DERs for VOC RACT compliance:

The table shows the actual VOC monthly emissions reported by Hitchiner for October 2003 through February 2004, and Hitchiner's projected emissions for March through June of 2004.

	Oct '03	Nov '03	Dec '03	Jan '04	Feb '04	Mar '04	Apr '04	May '04	June '04
Consecutive 12-month rolling total based on each new month's actual VOC emissions:	53.79	54.92	54.84	55.87	55.09	55.02	57.14	59.16	59.88
a. Tons VOCs emitted from Plant 1 per month :	4.84	3.94	3.43	3.97	4.48	6.12	6.12	6.12	6.12
b. VOC RACT requires 81% reduction of monthly VOC emissions:	x 0.81	x 0.81	x 0.81	x 0.81	x 0.81	x 0.81	x 0.81	x 0.81	x 0.81
c. 81% of each month's VOC emissions:	3.92	3.19	2.78	3.22	3.63	4.96	4.96	4.96	4.96
d. Total required VOC RACT reductions (Oct '03 – June '04):								Sum=	36.56
e. Divide by 0.9 for an "environmental contribution" factor (Env-A 3104.06) =								x 1/.9	40.62
f. Number of DERs to be purchased =									41

1. The number of DERs that Hitchiner must purchase is calculated based upon the actual tons of VOCs emitted by Hitchiner each month (Row a.).
2. In accordance with VOC RACT, Hitchiner must reduce its VOC emissions by 81%. Therefore, each month's VOC emissions must be multiplied by 0.81. (Row b.).

3. Row c. reflects 81% of each month's VOC emissions, in other words, the reduction required by VOC RACT.
4. Within 30 days of issuance of this AOC, Hitchiner must purchase the number of DERs necessary to cover its VOC emissions for the period covering suspension of the ERC Certificate (on September 30, 2003) through June 30, 2004. To calculate this number, add the number of tons calculated in step 3 above (Row c.) for each month from October 2003 through June 2004. This sum is shown in Row d.
5. In accordance with Env-A 3104.06, 10 percent of DERs must be retired upon their intended use to account for an Environmental Contribution. Hitchiner must divide the number of tons calculated in Row d. by 0.9 to determine the number of credits that must be purchased (Row e.), and which shall include permanently retiring 10 percent of the DERs as the environmental contribution.
6. Round up the number of DERs calculated (Row e.) to the nearest whole ton (Row f.). In this case, Hitchiner must purchase 41 tons of DERs.
7. Prior to each subsequent calendar quarter, Hitchiner must purchase the number of DERs it expects to need in order to cover the number of tons of VOCs it will emit by the end of that calendar quarter. For example, the DERs that Hitchiner purchases within 30 days of issuance of this AOC will cover its projected emissions of VOCs through the end of June 2004, i.e. the end of the second calendar quarter. Prior to the beginning of the third quarter, i.e. prior to July 1, 2004, Hitchiner must purchase enough DERs to cover its projected VOC emissions through the end of the third quarter.
8. If Hitchiner emits fewer tons of VOCs in a quarter than it projected, then any DERs that go unused at the end of that calendar quarter can be applied to the next quarter's emissions. For example, if on June 30, 2004 Hitchiner calculates that it has emitted fewer VOCs than it projected for March through June of 2004, and it only requires 36 DERs, then it will have 5 DERs unused. Hitchiner can apply these 5 DERs to the number of DERs it determines it must purchase prior to July 1, 2004 for its projected emissions of VOCs in the third quarter of 2004.